

HEADQUARTERS
HANDBOOK - H71

VOLUME: I
SECTION: 711
DATE: March 20, 2000

TO : Division and Branch Offices, EEO Director, EEO Counselors,
Field Offices, Presidents, AFGE Locals 3060 and 3309

SUBJECT : Equal Employment Opportunity Program - Counselors Handbook

CONTROL : Director, Equal Employment Opportunity Program (915) 832-4111

711.1 PURPOSE: This directive is issued to provide EEO Counselors with an updated reference handbook to use during counseling activities.

711.2 AUTHORITY: 29 CFR 1614, November 9, 1999 and EEOC Management Directive 110 dated November 9, 1999.

711.3 SUPERSESSSION: This directive supercedes Headquarters Directive Number: 11-89, Volume XI, Section 400, Chapter 410 dated March 1, 1989.

711.4 POLICY: The U.S. Section will designate EEO counselors for the purpose of informal counseling to seek resolution of allegations of discrimination based on race, color, religion, sex (including sexual harassment), national origin, age (over 40), physical or mental handicap or reprisal. This counseling will be available to current or former employees or applicants for employment with the U.S. Section. To the extent possible, based on availability of counselors and related factors, the U.S. Section will attempt to provide requested counseling service in a timely manner.

711.5 PROCEDURE: The attached handbook outlines the procedure to be followed in the informal resolution of EEO allegations of discrimination.

711.6 EFFECTIVE DATE: This directive is effective immediately.

FOR THE COMMISSIONER:

Tony R. Chavez
EEO Director

COUNSELOR HANDBOOK



**International Boundary and Water Commission
United States Section**

March 2000

COUNSELOR HANDBOOK

**INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES SECTION**

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Index

	Page #
I. GENERAL INFORMATION	1
A. Authority	1
B. Bases of EEO Allegations of Discrimination	1
C. Applicability of EEO Process	1
D. EEO Counselor Duties	1
E. Terminology Used in Informal Counseling Process	1
F. Identification of EEO Complaints	1
G. Alternative Dispute Resolution	2
H. Contents	2
II. EEO COMPLAINT PROCESS WITH TIME LIMITATIONS	3
A. Authority	3
1 thru 13. Timelines of EEO Process	3
III. THE EEO COUNSELING PROCESS	4
IV. INFORMAL COUNSELING	5
A. Initial Contact by Aggrieved Person	5
B. 45 Days Time Limit for Counseling	5
C. Initial Meeting with the Aggrieved Person	6
D. Meeting with Management	7
E. Assessing the Situation	8
F. Conduct Inquiry	9
G. Attempt Resolution	9
Meeting Tips	10
H. Successful Resolution	10
I. Unsuccessful Resolution	11
J. Final Interview	11
1. Contents of Final Interview	11
2. Final meeting if resolution was reached	12
3. Final meeting if resolution not reached	12
K. EEO Counselor's Report	12
L. Counselor Notes	13
M. Counseling Activity Report	13
Checklist for EEO Counselors	APPENDIX A
Glossary of EEO Terminology	APPENDIX B
Forms/Samples (index included)	APPENDIX C

I. GENERAL INFORMATION

A. Authority

In 1972, Congress extended the Civil Rights Act of 1964 to include federal employees and directed the U.S. Civil Service Commission (forerunner to the Office of Personnel Management (OPM)) to set up an administrative complaint procedure for federal employees. A part of this procedure is the informal stage of the complaint (or allegation) with the EEO counselor.

B. Bases of EEO Allegations of Discrimination

The bases currently established for EEO allegations are race, color, national origin, religion, sex, age, physical/mental handicap or reprisal. Allegations with other bases cannot be handled by an EEO counselor but can be referred to the proper office by the counselor.

C. Applicability of EEO Process

The EEO complaint procedure for this agency may be used by employees, former employees or applicants of the agency.

D. EEO Counselor Duties

The duties of the EEO counselor are performed as collateral (extra work without extra pay) to regularly assigned duties. When working with an aggrieved person, the EEO counseling responsibility is primary and foremost, until a resolution has been reached between management and the aggrieved or until notice of right to file a formal complaint has been delivered to the aggrieved by the counselor. If there is a conflict with your regular duties contact the Director of EEO for assistance.

Duties as EEO counselor do not have an impact on the grade of the counselor's assigned position.

E. Terminology Used in Informal Counseling Process

When a person seeks EEO counseling, he/she is referred to as an "aggrieved person" and the event/issue involved is considered an "allegation." In the event a formal complaint is filed, the matter is then referred to as a "complaint" and the individual who filed it is then considered a "complainant." See Appendix B, Glossary of EEO Terminology, for other definitions.

F. Identification of EEO Complaints

One of the most important duties as a counselor is to properly identify a matter brought to him/her as either a potential EEO complaint, negotiated grievance (union) or administrative grievance. Most employees do not fully understand these processes and need guidance. The following information on both negotiated grievances and administrative grievances will help to categorize an issue appropriately.

1. *Negotiated Grievance is the procedure outlined in the Agreement between the union (American Federation of Government Employees) and the agency (IBWC). The counselor should be familiar with the contents of the Agreement in order to appropriately advise those coming to him/her if the matter would be appropriately handled through that procedure. The union contract covers all employees who*

are members of the bargaining unit. Employees who are not members of the bargaining unit include professional employees, confidential employees, management and supervisory employees. Whether or not an employee is a member of the bargaining unit may be confirmed by the union representative or the personnel office.

- a. Bases of Negotiated Grievances could be dissatisfaction with duty assignments, hours of work or tours of duty, health or safety, or disciplinary actions considered inappropriate. Any issue covered by the union contract can be a negotiated grievance.

Example: An employee alleges that he/she has been forced to work overtime against expressed desires when requirements can be met by other employees willing to work. This can be handled by a negotiated grievance procedure. However, if this employee believes this action is because of his/her race, color, national origin, religion, sex, age, or handicap then it could be handled through the EEO process or the negotiated grievance procedure.

- b. **Negotiated Grievance Procedure** can be initiated by the employee bringing the matter to the union steward or to the supervisor within 28 calendar days of the event or when the employee became aware of the matter.

2. Administrative Grievance System is covered by Headquarters Directive 23-81, Volume III, Section 700, Chapter 771, dated February 25, 1981. It applies only to non bargaining unit employees.

- a. **Bases of Administrative Grievance** could be action or inaction by management to correct unacceptable behavior of an employee or supervisor.

Example: A supervisor uses abusive language to an employee; or an employee uses abusive language to a supervisor.

- b. **Administrative Grievance Procedure** begins with the informal stage which is a verbal presentation to his/her supervisor within 15 calendar days after the situation which prompted the complaint or after the employee became aware of the situation which prompted the complaint. See the directive for an outline of the complete process.

G. Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) is a term used to describe a variety of approaches to resolving conflict rather than through traditional adjudicatory or adversarial methods. An aggrieved person may choose between ADR or traditional counseling where the agency offers ADR. If ADR is selected, the counseling period is extended to 90 days.

H. Contents

This manual is not intended to fully explain the EEO program but rather to provide EEO counselors with a reference tool for use in the informal counseling process.

Chapter 2 of EEOC Management Directive 110, dated November 9, 1999, is the Equal Employment Opportunity Commission's authoritative document on EEO counseling and should be available for issues not covered in this manual.

II. EEO COMPLAINT PROCESS WITH TIME LIMITATIONS

A. The federal regulation covering Federal Sector Equal Employment Opportunity, 29 CFR 1614, designates the following process with time limits shown effective 9 November 1999. NOTE: At any stage in the presentation of allegations, the aggrieved person has the right to be represented by a person of his/her own choosing.

1. **Aggrieved person must** contact an EEO counselor within 45 calendar days of the alleged discriminatory action; or, if the allegation arises from a personnel action, within 45 calendar days of its effective date. *HOWEVER*, these time limits may be extended when (a) the aggrieved person shows he/she was not notified or not otherwise aware of the time limits or was prevented by circumstances beyond his/her control from submitting the allegations within the time limits; or (b) for other reasons considered sufficient by the agency.
2. **Counselor has 30 calendar days** to attempt an informal resolution of the matter. Prior to the end of this 30-day period, the aggrieved person may agree with the agency to extend counseling for an additional period of no more than 60 days.
3. **Counselor must**, where the aggrieved chose to participate in ADR and the claim has not been resolved before the 90th day, conduct a final interview and issue the notice of the right to file a discrimination complaint within 15 days of receipt of the notice.
4. **Aggrieved person may, after 30 calendar days** from the first contact with an EEO counselor, **OR WITHIN 15 CALENDAR DAYS** after receiving the Notice of Right to File a Formal Complaint from the EEO counselor, file a formal complaint with the EEO Director for the agency or his designated representative, if informal resolution of the alleged matter has not been achieved.
5. **Agency must** acknowledge receipt of formal complaint in writing including the date complaint was filed, the allegations of the complaint and of his/her right to appeal the final decision or any dismissal of all or a portion of the complaint.
6. **EEO director must** assign an investigator from a section of the agency other than where the complaint arose or contract a trained EEO investigator from the private sector. The investigation is conducted within 180 calendar days after the formal complaint was filed unless an agreement for extension has been made in writing.
7. **EEO director must** give a copy of the investigative file to the complainant with a notice of his/her right to request a hearing by an Administrative Judge from the Equal Employment Opportunity Commission or to request a final agency decision without a hearing.
8. **Complainant must** reply **WITHIN 30 CALENDAR DAYS** request either a hearing directly from EEOC and prove a copy of the request to the agency **or** request a final agency decision without a hearing.
9. **Agency must** upon receipt of the copy of the request for hearing from the complainant provide a copy of the complaint file including the investigative file to EEOC **or** issue a final decision within 60 calendar days of receiving the complainant's request for an immediate decision. Also, the agency must issue a final decision within 60 days of the end of the 30 day period that the complainant had to request either a hearing or an agency decision and did neither.

10. **EEO administrative judge** will review the file; schedule and conduct hearings which are recorded and transcribed verbatim and send the entire record to the complainant and the agency along with his/her findings and conclusions.
11. **The agency must** take final action within 40 calendar days of receiving the Judge's Order and determination of the appropriate remedy of the Administrative Judge.
12. **Complainant may**, within 30 calendar days after receiving the final agency decision appeal to the Equal Employment Opportunity Commission.
13. **Complainant may file a civil action in U.S. District Court:**
 - a. After 180 calendar days of filing the formal complaint if an agency decision has not been issued;
 - b. Within 90 calendar days of receiving the agency decision, if the complainant elects not to appeal to the Equal Employment Commission.
 - c. After 180 calendar days of filing an appeal to the Equal Employment Opportunity Commission if no decision is issued.
 - d. Within 90 calendar days after receiving the Equal Employment Opportunity Commission's decision.
 - e. Directly in complaints alleging either age or sex-based wage discrimination instead of using the EEO administrative process. However, when a formal complaint is filed, the election is considered to have been made to go through the EEO administrative process and the provisions outlined above will apply before filing a civil action.

III. THE EEO COUNSELING PROCESS

A. Overview

1. *A federal employee or applicant for employment who feels that he/she has been discriminated against due to race, color, religion, national origin, sex (including sexual harassment), age (over 40), mental or physical handicap or reprisal must first consult with an Equal Employment Opportunity (EEO) counselor to pursue resolution of the issue.*
2. *As a counselor you will inquire into the facts of the matter and attempt to resolve the issue(s) at the informal stage of the EEO complaint process. You will also be called upon by employees for basic information about the EEO program and complaint process. Providing information to employees is a vital part of your role.*
3. *You are a communication bridge between management and the aggrieved individual. You are neutral and do not represent either management or the aggrieved person.*
4. *The EEO counselor has six clearly defined duties that must be performed for each completed counseling action. A Checklist for EEO Counselors has been prepared and is included as Appendix A.*
 - a. Advise the aggrieved person about the EEO complaint process under 29 CFR Part 1614 and possible election requirements;
 - b. Determine the issue(s) and basis (es) of the potential complaint and establish if it is, in fact, an allegation covered by EEO. If so;
 - c. Conduct a limited inquiry for the purposes of furnishing information for settlement efforts and to be provided in a counseling report if a formal complaint is filed;
 - d. Seek a resolution of the matter at the lowest possible level;
 - e. Document the resolution or advise the aggrieved person of his/her right to file a formal discrimination complaint if resolution fails;
 - f. Prepare a report sufficient to determine that required counseling actions have been taken when informed that the agency has received a formal complaint.

B. Goal

The goal of counseling is to resolve the matter without trying to prove or disprove discrimination. To seek a resolution at the lowest possible level of management with both parties willing and agreeable to resolve the matter is the ideal to strive towards.

A step-by-step procedure of the informal counseling process follows.

IV. INFORMAL COUNSELING

A. Initial contact by aggrieved person: Establish a date for the first meeting as soon as reasonably possible. Plan on about two hours for the first meeting to allow enough time to determine the issues. Remember, you have 30 days from the initial contact to attempt to resolve the matter.

Before the first meeting, you need to establish if the person is a member of the collective bargaining unit so that you may give the proper notice and advice in the event the allegations are covered by the union contract.

B. 45 days time limit for counseling: If the event or incident that is being submitted for counseling took place more than 45 days before the person contacted a counselor, explain to the individual that the time limit for counseling has been exceeded and that you will need the approval of the EEO Officer before beginning counseling. If counseling is approved be sure to include the reason for the late contact in your notes. Explain to the aggrieved person that if you are unable to resolve the matter informally and he/she decides to file a formal complaint, the agency may dismiss it because of the late contact. Then proceed with the initial interview.

C. Initial meeting with the aggrieved person: The Counselor will conduct an initial counseling session and identify claims and fully inform individuals about their rights. Advise the person of the right to anonymity throughout the informal process and of the right to representation. These are two basic rights that must be covered as soon as possible. They are a part of the Notice of Rights and Responsibilities mentioned below. After the two basic rights are established the other written notices may be given towards the end of the meeting when you can better establish which notices are appropriate.

The counselor shall advise the aggrieved person(s) that, where the agency agrees to offer ADR, they may choose between participation in the ADR program or the counseling activities. When ADR is selected, resolution attempts through traditional counseling will be eliminated and the limited inquiry of the traditional counseling will change. Counselors must inform individuals that if the ADR process does not result in a resolution of the dispute, they will receive a final interview and have the right to file a formal complaint.

NOTE: If the aggrieved person designates a representative the counselor will then communicate directly with the representative instead of the aggrieved. In the event the representative is an attorney, remember, an award for attorney fees can only be made after a formal complaint has been filed and would not include any fees incurred during the informal stage.

The counselor should be prepared to give the aggrieved person the following written notices during the initial interview or as soon as possible afterwards. You will need two copies of each notice. Have the aggrieved person sign and date both copies. Give the original to the aggrieved person and retain one copy to attach to the EEO counselor's report. These notices are included in Appendix C, Tabs 1 through 8. The index of Appendix C includes a complete description of these forms.

Tab

- 1: Notice of Rights and Responsibilities - in all cases
- 2: Notice of EEO Complaint Procedures - in all cases
- 3: Negotiated Grievance Procedures Notice - if applicable
- 4: Mixed Case Notice - if applicable

- 5: Age Discrimination in Employment Act Notice - if applicable
- 6: Equal Pay Act Notice - if applicable
- 7: Notice of Class Complaint Procedures and Class Agent Responsibilities - if applicable
- 8: Procedures for Processing a Complaint of Discrimination with graphic handout - Administrative Complaint Procedures - if necessary in order to explain complaint procedure

The initial meeting with the aggrieved person is to gain information concerning the incident/action that has caused the person to seek resolution. Remember who, what, where, when, why and how this action come about. You must have specifics in order to conduct an inquiry. Information regarding the incident or action must be furnished in detail with the date established, where it took place, who the person was that took the action, and why the aggrieved person feels the action was taken. The person must believe that the reason for the action was based on race, sex, national origin, color, religion, age, physical or mental disability, or reprisal for the incident/action to fall within the purview of EEO. A counselor does not have the authority to conduct an inquiry concerning discrimination for any other reason, but can advise what office can assist the person, such as the union official if it appears to be a union grievance or the Personnel Office for either a Merit Systems Protection Board (MSPB) appeal or assistance with an administrative grievance.

By the end of the interview you must have the facts clearly defined in order to properly present the allegations to management in an attempt at resolution and also in case a formal complaint is filed. A formal complaint can only include issues that have been presented to a counselor. Be certain that you have all of the facts of the matter, the EEO basis of the complaint and what action the person will accept to resolve the issue.

The aggrieved person should understand fully that you ARE NOT HIS/HER REPRESENTATIVE; that your responsibilities are to gather information from witnesses, management, and from review of records/regulations; that you are to provide information to both the aggrieved and management concerning the results of the inquiry and to try and reach some resolution to the matter presented. Be sure the person understands that your position is to remain neutral and that you do not determine whether discrimination has, in fact, occurred. Explain that you have 30 days (from date of initial contact) to conduct your inquiry and that you will make every effort to attain an informal resolution within that time frame. Tell the person that you will contact them when you have information for them. Make a commitment about when you can get back with them and fulfill that commitment. Remember, this person is emotional and distraught - empathize and be kind.

D. Meeting with management: You must decide what management official can resolve the matter presented for counseling and talk to that person. It may or may not be the management official named or identified by the aggrieved person. If you cannot identify the specific person who could resolve the matter then you could begin with the supervisor of the aggrieved. Remember, as counselor you do not need to follow the chain of command but can go directly to the management official who you believe has the authority to resolve the issue.

Points to be covered with the management official. Explain to him/her when you set up the meeting that you are an EEO counselor making inquiry into an allegation that you need to discuss this matter with him/her. You may briefly explain the issue to him/her but, only, give the name if the person does not want to be anonymous. Also, tell the management official that he/she may have a representative and if he/she elects to do so then work through that person.

At the meeting:

1. *Explain the EEO complaint procedures. You may give the management official a copy of the handout, Procedures for Processing a Complaint of Discrimination, see Appendix C-8.*
2. *Explain your role as EEO counselor. Emphasize that you are trying to resolve the matter informally and, if this is possible, the filing of a formal complaint will be avoided. Make it clear you are not trying to prove or disprove discrimination. Make sure that the management official understands that you, the EEO counselor, are a neutral party and do not represent the aggrieved person or management.*
3. *Summarize the allegations and the reasons the aggrieved person feels there was discrimination. You can tell the management official now what the aggrieved person wants as a resolution or you can wait until you get management's response. Remember, the aggrieved person's name can be used only if anonymity has been waived in writing.*
4. *Ask the management official to give his/her version of the matter. Be sure and get specifics about any significant differences including any documentation that might be available or names of witnesses to the action or incident.*
5. *Ask for a suggestion as to a way the problem might be resolved. Is management willing to give the aggrieved what he/she wants or to make an offer to resolve the matter? If the official is unwilling to give the aggrieved what he/she wants or is unwilling to offer anything, try and find out why. You will need this information when you talk to the aggrieved. Is the management official interested in meeting with the aggrieved person?*
6. *In cases alleging discrimination based on religion or handicap, you may explore "reasonable accommodation" with management. The Rehabilitation Act of 1973 requires an agency to make reasonable accommodation for a qualified disabled applicant or employee. The Civil Rights Act of 1964 requires an agency to make reasonable accommodation for an employee or applicant's religious practice.*

If the management official will accept the aggrieved person's desired resolution then it is time to tell the aggrieved person that management has accepted the desired resolution, and hold the final interview.

If the management official makes an alternative offer, explain that this offer will need to be made to the aggrieved person or his/her representative. Make sure that both the management official and the aggrieved person understand that they cannot be forced to enter into an agreement as a result of EEO counseling.

Do not end the meeting with questions unanswered. You must have a clear picture in your mind of the management official's perception of the allegations and position regarding resolution. Before you end the meeting tell the management official that any action taken against the individual that could be perceived as retaliation because the individual complained or participated in any way in a complaint could be perceived as reprisal which is prohibited and can be the basis for an EEO allegation.

If the management official is not willing to make an offer to resolve the matter, then you must assess the situation and determine what to do next.

E. Assessing the situation: Determine by the nature of the situation and the relationship between the aggrieved and management what can help resolve the issue. How willing are the aggrieved person and management to participate in joint or individual meetings? Determine if you have enough information to proceed to attempt at resolution. You may want to make an inquiry or review records, or both.

F. Conduct inquiry - if you need more information then an inquiry will be necessary. You may decide to interview witnesses, review records, or both. As you interview witnesses or review records, focus on the issue and basis of the aggrieved person's allegation and on resolution.

The decision on who to interview is crucial. You want to interview people who are directly concerned in some way, however, this does not mean to limit involved parties to management types. Co-workers or friends may have knowledge about the event or action, may have overheard or been a part of pertinent conversations or seen actions taking place. While you want to interview only those people who have information you believe will help you resolve the matter this may be hard to do in some instances. Do the best you can.

Your interviews will be informal conversations. The statements of those interviewed will not be sworn statements. In the interviews you should:

1. *Explain the purpose of the interview - that you are trying to resolve an allegation of discrimination.*
2. *Tell the witness that he or she is permitted to be accompanied by a representative.*
3. *Explain your role as an EEO counselor and that you are not a representative of either the aggrieved person or management.*
4. *Give a brief summary of the matter, only enough so he or she can answer your questions about the matter.*
5. *Then ask what he/she knows about the matter. Ask for specific information.*

Allow the witness to tell you in his/her own words his version of the allegation. Remember, you are not trying to prove or disprove that discrimination occurred, but simply to resolve the matter informally. Only first-hand information is creditable; that is, what the person has observed, experienced or what the person was told by the person or persons directly involved.

Review agency records when necessary. Review only those which contain information directly related to the allegations. Documentation is the most reliable source of information in any inquiry. Any written memo, directive, SOP, personnel records or the like is the most creditable form of information.

G. Attempt resolution - After you have assessed the situation, made any inquiries necessary, and reviewed records, it is time to proceed in your attempts at resolution. This may be done by joint meetings, individual meetings, or telephone communication. It will be up to you to decide from the attitudes of the people involved and the possibility of negotiation which of these methods to pursue. In a telephone communication, ask if anyone else is on the line and remind the person that tape recording of the conversation is prohibited. Should you decide on face to face meetings, information follows that will be of help to you.

For a meeting, whether joint or individual, the following "tips" are provided::

1. *Start the meeting on time.*
2. *Remind the parties of your role: you will be the chairperson, you are neutral and impartial.*
3. *Ask the parties to review the issue as they see it.*
4. *Summarize what each party says.*
5. *Identify the points the parties agree on and the points where they disagree.*
6. *Ask the parties to go over the details of the action/incident. They may see it differently if it is reviewed and fresh in their minds.*
7. *Avoid answering questions, such as "Do you think that is a fair offer?" Explain that you must remain neutral with only the aggrieved or management official making judgments on offers.*
8. *Let the parties express their feelings, but do not let emotions get out of control. If you cannot calm the participants down, take a break or adjourn.*
9. *Encourage the parties to talk. Silence will rarely achieve resolution.*
10. *Ask questions to clarify their statements or to get more information.*
11. *Avoid making value judgments about the issues or individuals. Do not say, for example, "I do not agree with you."*
12. *Listen for changes in positions or signs that one party is willing to change.*
13. *Do not violate confidences.*
14. *Watch how parties sit, move, and react to each other; their behavior may give you information. For example, if one party moves closer to the other, it could mean moving closer to accepting an offer.*
15. *Do not let discussions and arguments get to the point where the parties feel they cannot change positions without losing face.*

16. *If there is a stalemate, make proposals for the parties to consider that may resolve the matter.*

H. Successful resolution - When the aggrieved person and management agree on a settlement, you have achieved a successful resolution. A Settlement Agreement should be prepared when a resolution is reached. The Settlement can be written by anyone, but is generally written by the counselor. A sample is included under Appendix C, Tab 9.

The written settlement agreement must include a brief summary of the case, including the matter and the EEO basis. It should state clearly and specifically what the two parties have agreed to. It should further include a statement stating that if the agency fails to comply with the terms of the Settlement Agreement, the aggrieved person should notify the agency Director of EEO within 30 calendar days and ask that either:

The terms of the Settlement Agreement be implemented, or the matter be reinstated for further processing from the point processing ceased under terms of the Settlement Agreement

NOTE: Any written communication provided to an aggrieved person being counseled should first be approved by the EEO Officer. This does not include the notices provided to the aggrieved person at the first meeting.

The aggrieved person should sign and date the Agreement (and copies) to show that it is understood, agrees with it, and received a copy. The management official should receive a copy unless the aggrieved requested anonymity. The EEO counselor will also maintain a copy. In the case of an aggrieved person requesting anonymity, his/her name will be left off until management has signed it and the management official will not receive a copy.

The Settlement Agreement may be given to the parties before, at, or after the final interview.

I. Unsuccessful resolution: At some point, you may decide that further efforts will not result in agreement. You should tell both management and the aggrieved that you plan on ending your efforts and will hold a final interview with the aggrieved. If, either party offers any hope of resolution or if it appears that informal resolution is possible, given more time, the aggrieved may agree in writing with the agency to postpone the final interview and extend counseling for an additional period of time, not to exceed 60 days, at which time a final interview must be conducted.

J. Final interview: The final interview ends your efforts to resolve an allegation of discrimination. It ends the informal stage of an EEO complaint. You must hold a final interview whether or not you were successful in resolving the matter.

If the aggrieved chose ADR and attempts in resolving the claim, were unsuccessful, the agency will return the claim to the counselor to write the counseling report. That report will describe the initial counseling session, frame the issues, and report only that ADR was unsuccessful.

1. *The final interview will usually consist of the following:*

- a. A summary of the matter from both the aggrieved person's and the management official's view.
- b. State the resolution that the aggrieved person has requested.
- c. State the management official's offer or offers.
- d. Summarize the actions you took to resolve the matter.

2. *At the final meeting, If resolution was reached:*

- a. If the Settlement Agreement has not been signed, have the aggrieved person sign and date three copies. Be certain that both the management official and the aggrieved person have signed the agreement and have received a copy and that you have retained one copy for your file. In the case where the aggrieved person requests anonymity the aggrieved person does not sign the copy for management. (If for some reason you cannot furnish a copy of the Settlement Agreement make a definite commitment when you will do so.)
- b. Discuss the terms of the Settlement Agreement. Make sure the aggrieved person knows what to do if the terms of the agreement are not complied with.

3. *If resolution was not reached:*

- a. Make it clear that resolution was not reached.
- b. Tell him/her of the right to file a formal complaint. Furnish a copy of the Notice of Right to File a Formal Complaint and explain as necessary, see Appendix C-10. Tell the person that he/she has 15 calendar days from the date of this notice to file a formal complaint. Be sure to clear this action with the EEO Officer before the final interview.
- c. Provide a Formal Complaint of Discrimination form (Appendix C-11) in the event he/she wishes to file. Be certain the complainant(s) understands that the formal complaint can only contain those matters covered by counseling. You may offer your assistance in helping to complete the form if he/she asks or if you believe that help is needed. If you do help, you should write only what the person says, making only grammatical changes necessary to make it understandable. Explain that if a formal complaint is filed, the right to remain anonymous is lost.

Remember that, as an EEO counselor, you will neither encourage nor discourage the aggrieved person in filing a formal complaint.

K. *EEO counselor's report:* The EEO counselor must write a report when informed that the agency has received a formal complaint. This will assist the agency in determining if the requirements of counseling have been met. This report must be submitted within 15 days after receiving notice that a formal complaint was filed.

The format included at Appendix C-12 may be used for this report. Be sure to include a precise description of the matter and the basis stated by the aggrieved. Also include pertinent documents gathered during the inquiry.

Include any information about the timeliness of the counseling with explanations if necessary. A summary of informal resolution attempts should be included. Remember that your report is a factual documentary of what you reviewed what was told to you, who you interviewed, and the issues and basis on which you conducted the inquiry. It is not a document that provides conclusions as to whether discrimination occurred or your opinions as to whether an action was fair or not.

The EEO Officer will furnish a copy of this report to the aggrieved person. Therefore, an original and one copy of the report should be forwarded to the EEO Officer along with copies of signed forms that have been furnished to the aggrieved person and your notes. It is suggested that you retain a complete copy of the report and attachments for one year or until the formal complaint procedure has been completed including any appeals or court action.

NOTE: Your files should be maintained in a secure place, such as a locked cabinet or desk, to maintain the confidentiality of statements or privacy act information which may be a part of your inquiries.

L. Counselor notes - In the event there is no formal complaint filed and no counselor's report is required, your file containing forms, notes and any other material gathered in the counseling process should be maintained for 90 days.

M. Counseling activity report - An annual report is required by the Equal Employment Opportunity Commission on counseling activity. This report is submitted by the EEO Officer and is due by October 31 each year. Your input to this report should be submitted to the EEO Officer by October 10 each year. This may be submitted informally on a routing slip or memo and include the number of people you have counseled and the basis of the allegations, that is, race, color, national origin, sex, religion, age or handicap.

EEO COMPLAINT PROCESS WITH TIME LIMITATIONS

A. The federal regulation covering Federal Sector Equal Employment Opportunity, 29 CFR 1614, designates the following process with time limits shown effective 9 November 1999. NOTE: At any stage in the presentation of allegations, the aggrieved person has the right to be represented by a person of his/her own choosing.

1. **Aggrieved person must** contact an EEO counselor within 45 calendar days of the alleged discriminatory action; or, if the allegation arises from a personnel action, within 45 calendar days of its effective date. *HOWEVER*, these time limits may be extended when (a) the aggrieved person shows he/she was not notified or not otherwise aware of the time limits or was prevented by circumstances beyond his/her control from submitting the allegations within the time limits; or (b) for other reasons considered sufficient by the agency.
2. **Counselor has 30 calendar days** to attempt an informal resolution of the matter. Prior to the end of this 30-day period, the aggrieved person may agree with the agency to extend counseling for an additional period of no more than 60 days.
3. **Counselor must**, where the aggrieved chose to participate in ADR and the claim has not been resolved before the 90th day, conduct a final interview and issue the notice of the right to file a discrimination complaint within 15 days of receipt of the notice.
4. **Aggrieved person may, after 30 calendar days** from the first contact with an EEO counselor, OR WITHIN 15 CALENDAR DAYS after receiving the Notice of Right to File a Formal Complaint from the EEO counselor, file a formal complaint with the EEO Director for the agency or his designated representative, if informal resolution of the alleged matter has not been achieved.
5. **Agency must** acknowledge receipt of formal complaint in writing including the date complaint was filed, the allegations of the complaint and of his/her right to appeal the final decision or any dismissal of all or a portion of the complaint.
6. **EEO director must** assign an investigator from a section of the agency other than where the complaint arose or contract a trained EEO investigator from the private sector. The investigation is conducted within 180 calendar days after the formal complaint was filed unless an agreement for extension has been made in writing.
7. **EEO director must** give a copy of the investigative file to the complainant with a notice of his/her right to request a hearing by an Administrative Judge from the Equal Employment Opportunity Commission or to request a final agency decision without a hearing.

8. **Complainant must** reply *WITHIN 30 CALENDAR DAYS* request either a hearing directly from EEOC and prove a copy of the request to the agency **or** request a final agency decision without a hearing.
9. **Agency must** upon receipt of the copy of the request for hearing from the complainant provide a copy of the complaint file including the investigative file to EEOC **or** issue a final decision within 60 calendar days of receiving the complainant's request for an immediate decision. Also, the agency must issue a final decision within 60 days of the end of the 30 day period that the complainant had to request either a hearing or an agency decision and did neither.
10. **EEO administrative judge** will review the file; schedule and conduct hearings which are recorded and transcribed verbatim and send the entire record to the complainant and the agency along with his/her findings and conclusions.
11. **The agency must** take final action within 40 calendar days of receiving the Judge's Order and determination of the appropriate remedy of the Administrative Judge.
12. **Complainant may**, within 30 calendar days after receiving the final agency decision appeal to the Equal Employment Opportunity Commission.
13. **Complainant may file a civil action in U.S. District Court:**
 - a. After 180 calendar days of filing the formal complaint if an agency decision has not been issued;
 - b. Within 90 calendar days of receiving the agency decision, if the complainant elects not to appeal to the Equal Employment Commission.
 - c. After 180 calendar days of filing an appeal to the Equal Employment Opportunity Commission if no decision is issued.
 - d. Within 90 calendar days after receiving the Equal Employment Opportunity Commission's decision.
 - e. Directly in complaints alleging either age or sex-based wage discrimination instead of using the EEO administrative process. However, when a formal complaint is filed, the election is considered to have been made to go through the EEO administrative process and the provisions outlined above will apply before filing a civil action.

NOTICE OF RIGHTS AND RESPONSIBILITIES

You must be notified in writing of your rights and responsibilities during the EEO complaint process. This form notifies you of these rights and responsibilities.

- a. Prior to filing a formal complaint, you have the right to anonymity.

___ I want to remain anonymous during counseling.

___ I do NOT want to remain anonymous during counseling.

- b. You have the right to representation throughout the complaint process including the counseling stage. The EEO counselor is not an advocate for either the aggrieved person or the agency. (You have a duty to notify the agency if you get a representative).

___ I want a representative. My representative will be:

Name: _____

Address: _____

Phone: (____) _____

___ I do NOT want a representative at this time. I understand I may get one at anytime during the EEO complaint process.

- c. You have the right to choose between the agency's alternative dispute resolution (ADR) process or EEO counseling, where the agency agrees to offer ADR in a particular case, and information about each procedure.
- d. You may be required to choose between a negotiated grievance procedure and the EEO complaint procedure. Consult your EEO Counselor for clarification.
- e. You may be required to choose between the EEO complaint procedure and an appeal to the Merit Systems Protection Board (MSPB). Consult your EEO counselor for clarification.
- f. You are required to file a complaint within 15 calendar days of receipt of the Counselor's notice of right to file a formal complaint in the event that you wish to file a formal complaint at the conclusion of counseling or ADR.

- g. You may file a notice of intent to sue and file a lawsuit under the ADEA instead of an administrative complaint of age discrimination when age is alleged as a basis for discrimination, pursuant to §1614.201(a).
- h. You have the right to go directly to a court of competent jurisdiction on claims of sex-based wage discrimination under the Equal Pay Act even though such claims are also cognizable under Title VII.
- i. You have the right to request a hearing before an EEOC Administrative Judge (except in a mixed case) after completion of the investigation or 180 calendar days from the filing of a formal complaint, whichever comes first. Your request should be made directly to the appropriate EEOC office, and you must notify the responding agency of your hearing request. Consult the EEO counselor for information on where a request for a hearing and notice to the agency should be sent.
- j. You have the right to an immediate final decision after an investigation by the agency in accordance with §1615.108.(f).
- k. You have the right to go to U.S. District Court 180 calendar days after filing a formal complaint if no final action has been taken on the complaint, or 180 days after filing an appeal if no decision has been issued on the appeal.
- l. You must mitigate damages, i.e. you must look for other appropriate employment and you must seek treatment for any injury you claim. Interim earnings or amounts that could be earned by the individual with reasonable diligence generally must be deducted from an award of back pay.
- m. You must keep the agency and EEOC informed of your current mailing address and serve copies of hearing requests and appeal papers on the agency.
- n. Where counseling is selected, you have the right to receive in writing within 30 calendar days of the first counseling contact (unless you agree in writing to an extension) a notice terminating counseling and informing you of:
 - (1) the right to file a formal individual or class complaint within 15 calendar days of receipt of the notice,
 - (2) the appropriate official with whom to file a formal complaint, and
 - (3) your duty to immediately inform the agency if you retain counsel or a representative. Any extension of the counseling period may not exceed an additional sixty (60) calendar days.
- o. Where you agree to participate in an established ADR program, the written notice terminating the counseling period will be issued upon completion of the dispute

resolution process or within ninety (90) calendar days of the first contact with the EEO counselor, whichever is earlier.

- p. Only claims raised at the counseling stage or claims that are like or related to them may be the subject of a formal complaint, or an amendment to a complaint after it has been filed.
- q. Your rejection of an agency's offer of resolution made pursuant to §1614.109(c) may limit the amount of attorney's fees or costs you can recover.
- r. The identity and address of the EEOC field office to which a request for a hearing must be sent.
- s. The identity and address of the agency official to whom you must send a copy of the request for a hearing. You must certify to the Administrative Judge that you have provided the agency with a copy of a request for a hearing.
- t. The time frames in the complaint process.
- u. The class complaint procedures and responsibilities of a class agent if you wish to file a class complaint.
- v. If you have filed two or more complaints, the agency must consolidate them after appropriate notice to you. §1614.606. When a complaint has been consolidated with one or more earlier complaints, the agency shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days of the filing of the first complaint.

I, _____, ACKNOWLEDGE RECEIPT OF A COPY OF THIS NOTICE.

(Aggrieved Person) Date: _____

(Aggrieved Person's Representative) Date: _____

(EEO Counselor) Date: _____

FORMS/HANDOUTS/SAMPLES

FORMS/HANDOUTS FOR INITIAL INTERVIEW (TABS 1 THRU 7)

- TAB 1** **Notice of Rights and Responsibilities** - to ALL aggrieved persons. This covers the right to anonymity representation, the right to receive a written Notice of Right to File a Formal Complaint at the final counseling Interview or soon after. It also contains the responsibilities of the aggrieved if a formal complaint is filed.
- TAB 2** **Notice of EEO Complaint Process** - to ALL aggrieved persons. An outline of the process with time frames.
- TAB 3** **Negotiated Grievance Procedures Notice** - to ALL aggrieved persons WHO ARE A MEMBER OF THE COLLECTIVE BARGAINING UNIT. This notice includes the statement of the right to file a grievance or a formal EEO complaint but not both.
- TAB 4** **Mixed Case Notice** - to ALL aggrieved persons WHO ALLEGE DISCRIMINATION BASED ON TWO THINGS: 1) An allegation that the discrimination is based on race, color, national origin, sex, religion, age or handicapping condition; and 2) an action that can be appealed to the Merit Systems Protection Board (MSPB). When an action is appealable to the MSPB that fact will be stated on the SF 50, Notification of Personnel Action.
- TAB 5** **Age Discrimination in Employment Act Notice** - to ALL aggrieved persons WHO ARE ALLEGING DISCRIMINATION BASED ON AGE (OVER 40). This notifies them of the option to use the EEO complaint process or to use a civil action in U.S. District Court after filing a notice of intent to sue with EEOC.
- TAB 6** **Equal Pay Act Notice** - to ALL aggrieved persons ALLEGING SEX-BASED WAGE DISCRIMINATION. This is a notification of the alternative to file a civil action in U.S. District Court or to use the EEO complaint process.

- TAB 7** **Notice of Class Complaint Procedures and Class Agent Responsibilities** - to ALL aggrieved persons ALLEGING DISCRIMINATION AS AN INDIVIDUAL AND AS A MEMBER OF A CLASS.
A class is a group who alleges to have been adversely affected by a policy or practice that discriminates against the group on the basis of race, color, religion, sex, national origin, age, handicap or reprisal.

HANDOUT FOR MANAGEMENT OFFICIALS OR THE AGGRIEVED PERSON TO FULLY EXPLAIN EEO COMPLAINT PROCESS (TAB 8):

- TAB 8** **Procedures for Processing a Complaint of Discrimination with graphic handout Administrative Complaint Procedures** - These forms can be used to help either the aggrieved person or management official to understand the complaint process.

SAMPLES/FORMS TO BE PROVIDED TO THE AGGRIEVED AT THE FINAL INTERVIEW (TABS 9 - 11):

- TAB 9** **Sample of Settlement Agreement letter** which is addressed to the aggrieved person and contains a brief summary of the alleged discrimination action or incident including the basis. Also include a brief outline of your inquiry and the resolution that has been agreed upon. There must be included a statement of the actions the aggrieved person can take if he/she believes the agency has violated the terms of the informal resolution. Obtain the approval of the EEO Officer before providing this letter to the aggrieved person. Original and two copies should be signed - one for the agency official, one for the aggrieved and one for the counselor's file.
- TAB 10** **Sample of Notice of Right to File a Formal Complaint** - This memorandum should be given to the aggrieved person at the final interview. If for some reason this can't be done then it should be provided to the individual very soon thereafter. It must contain the basis of the alleged discrimination, the name of the head of the agency (Commissioner) as the respondent to a formal complaint, and the names and addresses of those who are

authorized to receive formal complaints. The EEO Director and EEO Officer are authorized to receive complaints for this agency. Be sure and have this approved by the EEO Officer before providing to the alleged person. Keep a signed copy for your files.

- TAB 11** **Formal Complaint of Discrimination** - This form can be used to file a formal EEO complaint. It is not mandatory to use this form but the information stated on the form must be included. The counselor may assist in preparation of the complaint if necessary. Remind the aggrieved person that he/she has 15 calendar days from the date of the Notice of Right to File a Formal Complaint to file a formal complaint.
- TAB 12** **EEO Counselor's Report** - This is a sample of the counselor's report that will be required if a formal complaint is filed. It contains all of the information that will be required for management to determine if the informal process has been properly conducted. It must contain a precise description of the allegations and specifically what you have done to resolve the matter. It will have attached to it all of the forms, notices, and letters which have been used plus any pertinent documents you may have gathered during the inquiry.
- TAB 13** **Federal Equal Opportunity Annual Statistical Report of Discrimination Complaints, EEOC Form 462** - Annual report on counseling activity required by EEOC. This report should be submitted to the Equal Employment Officer by October 10 each year. Negative reports may be submitted on a routing slip or memorandum.

Notice of EEO Complaint Process

This form is your written notice about the EEO complaint process.

Matter which May Be Raised in Formal Complaint

If your allegation of discrimination is not resolved during the counseling or in the ADR process and you file a formal complaint, you may include only matters:

- ! Raised during the counseling
- ! Like or related to matters raised during counseling

If you raise other matters in a formal complaint, the agency will dismiss them from your complaint.

EEO Complaint Process: Time Frames

- ! The aggrieved person must contact an EEO counselor within 45 calendar days after the:
 - S Alleged discriminatory action.
 - S Effective date of an alleged discriminatory personnel action.
- ! The aggrieved person must be given a Notice of Right to File A Formal Complaint no later than:
 - S 30 calendar days after the first contact with the counselor. The period may be extended if the aggrieved person and the agency agree to an extension of no more than an additional 60 calendar days.
 - S 90 calendar days after the first contact with the counselor if the aggrieved person agrees to use the agency's alternative dispute resolution procedures.

- ! The aggrieved person may file a formal complaint:
 - S At any time after the 30th calendar day when the aggrieved person and the agency agree to an extension and resolution efforts continue.
 - S Within 15 calendar days after receiving a Notice of Right to File a Formal Complaint.
- ! If the Agency dismisses all or part of the formal complaint, the complainant may file an appeal to the EEOC, Office of Federal Operations (OFO), within 30 calendar days. If OFO decision is:
 - S Dismissal was not proper, OFO will order the agency to accept the complaint.
 - S Dismissal of the complaint was proper, the complainant may file a civil action in U.S. district court within 90 calendar days after receiving the OFO decision.
 - S Not issued with 180 calendar days after the appeal was filed, the complaint may file a civil action in U.S. District Court.

Negotiated Grievance Procedures Notice

U.S. Equal Employment Opportunity Commission (EEOC) regulations in Title 29 CFR, Part 1614 §105(b) require that I, as an EEO counselor, notify you that 5 U.S.C. 7121 (d) may apply to the alleged discriminatory action which caused you to seek counseling. I must notify you at the initial contact, or as soon as possible thereafter. I must also communicate to you the substance of 29 CFR, Section 1614.301. This form is your notification.

You are alleging discrimination based on race, color, religion, sex, national origin, age, or disability, and:

- ! You are an employee of a Federal agency subject to the provisions of 5 U.S.C. 7121 (d), and
- ! You are covered by a collective bargaining agreement which permits allegations of discrimination to be raised through the negotiated grievance procedures.

You may seek resolution of the alleged discrimination action by filing either a:

1. Grievance under the negotiated grievance procedures. You may file the grievance before, during, or after EEO counseling, but not after you file a formal discrimination complaint.
2. Formal discrimination complaint if the matter is not resolved through EEO counseling.

If you have questions concerning the applicability of 5 U.S.C. 7121 (d) to you, you should immediately contact a representative of the labor organization under which you are covered. If you have questions on counseling under 29 CFR, Part 1614, you should ask me or another EEO counselor.

I hereby certify that I have been informed of the applicability of 5 U.S.C. 7121(d) to my allegations(s) of discrimination. The EEO counselor has told me the substance of 29 CFR, Section 1614.301 (printed on the reverse of this form), and given me the original or a copy of this form. I understand that the original or a copy of this form will be made a part of the EEO counselor's file as evidence of the EEO counselor's compliance with 29 CFR, Section 1615.105(b).

(EEO Counselor)

Date: _____